

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

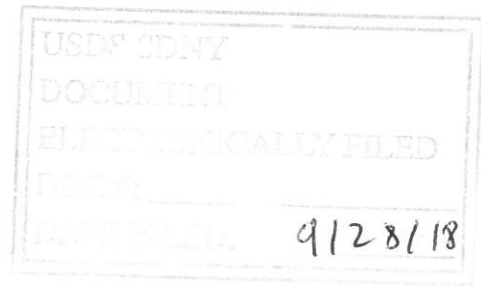
DAVID LANE JOHNSON,

Plaintiff,

-v-

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, *et al.*,

Defendants.



No. 17-cv-5131 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

Plaintiff David Lane Johnson brings this action against the National Football League Players Association (“NFLPA”) and the National Football League Management Council (“NFLMC”), seeking to vacate an arbitral award and making separate claims against the NFLPA for violating its duty of fair representation and the NFLMC for violating its collective-bargaining agreement. Now before the Court is the NFLPA’s motion to file under seal its memorandum of law in support of its motion to dismiss, as well as Exhibit C of that memorandum, under seal – with redacted versions filed on the public docket. In general terms, the redacted materials contain sensitive information regarding Plaintiff’s testing for performance-enhancing substances. Neither Plaintiff nor the NFLMC oppose the motion. For the reasons set forth below, the NFLPA’s motion is GRANTED.

The Second Circuit has articulated a three-step inquiry for determining whether documents submitted to the Court may be sealed in light of the presumption of open access to “judicial documents.” *Lugosch v. Pyramid Co. of Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006); *see also Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 139–43 (2d Cir.

2016). First, in order for the presumption of open access to attach, the documents at issue must be “judicial documents,” which are “item[s] filed [that are] relevant to the performance of the judicial function and useful in the judicial process.” *Lugosch*, 435 F.3d at 119. Second, if the documents at issue are “judicial,” the Court must then determine the weight of the presumption of access by considering the value of the information in the “exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts.” *Id.* Finally, the Court “must balance competing considerations” against the presumption of access. *Id.* at 119–20 (citation and quotation marks omitted). “Such countervailing factors include but are not limited to the danger of impairing law enforcement or judicial efficiency and the privacy interests of those resisting disclosure.” *Id.* at 120 (internal quotation marks omitted). “The burden of demonstrating that a document submitted to a court should be sealed rests on the party seeking such action” *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 826 (2d Cir. 1997).

The memorandum of law and Exhibit C are plainly judicial documents to which the presumption of public access attaches. However, as noted above, that presumption is given different “weight” in different contexts. *Lugosch*, 435 F.3d at 118. Here, the value of the information to those monitoring the federal courts is low, given that the NFLPA has engaged in carefully circumscribed redactions, ensuring that the essence of the documents remains in public view.

Furthermore, the countervailing interests are substantial. The NFLPA argues that sealing is proper in light of its contractual obligation under the 2015 Performance-Enhancing Substances Policy to maintain the confidentiality of the redacted information. Although “[t]he mere existence of a confidentiality agreement covering judicial documents is insufficient to overcome the First Amendment presumption of access,” *Aioi Nissay Dowa Ins. Co. v. ProSight Specialty Mgmt. Co.*,


No. 12 Civ. 3274 JPO, 2012 WL 3583176, at *6 (S.D.N.Y. Aug. 21, 2012), the contractual obligation at issue here was crafted in light of the need to protect players' "recognized privacy interest in [their] medical records," *United States v. Sattar*, 471 F. Supp. 2d 380, 387 (S.D.N.Y. 2006), and is therefore entitled to significant weight.

Having reviewed the un-redacted materials and considered the parties' arguments, the Court concludes that the presumption in favor of public access is overcome by "the privacy interests" implicated here, *Lugosch*, 435 F.3d at 120, and that the NFLPA may file its memorandum of law and Exhibit C under seal, with redacted versions filed on the public docket.

The Clerk of Court is respectfully directed to terminate the motion pending at Doc. No. 104.

SO ORDERED.

Dated: September 28, 2018
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE